

Hearing Date: September 26, 2018  
Time: 1:30 p.m.

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK**

In re:

FEDERATION EMPLOYMENT AND  
GUIDANCE SERVICE, INC. d/b/a FECS,

Debtor.

ROBERT N. MICHAELSON, solely in his  
capacity as CREDITOR TRUSTEE OF THE  
FECS CREDITOR TRUST,

Plaintiff,

vs.

ANDREWS INTERNATIONAL, INC.,

Defendant.

Chapter 11

Case No. 15-71074(REG)

Adv. Proc. No. 17-08043 (REG)

[Filed Concurrently with Memorandum  
of Points Authorities; Separate Statement  
of Disputed Material and Additional  
Facts; Declaration of Judith Pincus]

**DECLARATION OF JEFFREY P. NOLAN IN SUPPORT OF PLAINTIFF'S  
OPPOSITION TO DEFENDANT ANDREWS INTERNATIONAL, INC.'  
APPLICATION FOR SUMMARY JUDGMENT DISMISSING THE COMPLAINT**

I, JEFFREY P. NOLAN, declare:

1. I am an attorney at law duly licensed to practice before all courts in the State of California. I am an attorney with the law firm of Pachulski Stang Ziehl & Jones LLP, attorneys of record for Plaintiff, Robert N. Michaelson, solely in his capacity as Creditor Trustee of the FECS Creditor Trust (the "Plaintiff") of Federation Employment and Guidance Service, Inc. d/b/a "FECS". The facts stated herein are of my own personal knowledge, or made known to me from a review of the files and pleadings in this action which are maintained in the ordinary course of business in our offices. If called upon as a witness to any facts set forth herein, I could and would competently testify thereto.

2. I submit this declaration (the "Declaration") in support of *Plaintiff's Opposition to Defendant Andrews International, Inc.'s Application for Summary Judgment Dismissing the Complaint* (the "Opposition").

3. Attached hereto as Exhibit 1 is a true and correct copy of the *Affidavit of Service of Master Service List* [Dkt. No. 804] with attached *Master Service List — U.S. Mail and Email Recipients* [as of February 2, 2017] ("MSL") [Dkt. No. 800]. The MSL contains the following U.S. Mail and Email [ECF] Recipient contact information for Defendant's counsel:

Simon & Partners LLP  
Attn: Michael J. Levin  
551 Fifth Avenue, 31st Floor  
New York, NY 10175

Email: mlevin@simonlawyers.com.

The attached MSL is evidence that as of February 2, 2018, all parties listed would receive copies of all filings of pleadings in this proceeding.

4. Attached hereto as Exhibit 2 is a true and correct copy of [Notice of] *Stipulation and Order Authorizing Official Committee of Unsecured Creditors to Prosecute Certain Claims on Behalf of the Estate* [Dkt. No. 803] filed on February 7, 2017.

5. Attached hereto as Exhibit 3 is a true and correct copy of *Joint Emergency Application for an Order to Show Cause and Entry of a Stipulation and Order Authorizing Official Committee of Unsecured Creditors to Prosecute Certain Claims on Behalf of the Estate* ("Joint Emergency Application") [Dkt. No. 807].

6. Attached hereto as Exhibit 4 is a true and correct copy of *Order to Show Cause upon the Emergency Application* ("OSC") issued on February 15, 2017, as to why the Stipulation should not be entered granting the Committee leave, standing and authority to

prosecute and settle any estate claims with full rights and privileges of the Debtor. [Dkt. No. 808].

7. Attached hereto as Exhibit 5 is a true and correct copy of *Affidavit of Service* of Joint Emergency Application and OSC on Simon & Partners LLP, Michael J. Levin, mlevin@simonlawyers.com [Dkt. No. 810].

8. Attached hereto as Exhibit 6 is a true and correct copy of the *Official Transcript of Hearing held February 6, 2017 at 1:39 p.m. ("2/6/17 Hearing Transcript")* filed with the Court on February 15, 2017 [Dkt. No. 809].

9. Attached hereto as Exhibit 7 is a true and correct copy of the *Official Transcript of Hearing held February 21, 2017 at 10:04 a.m. ("2/21/17 Hearing Transcript")* filed with the Court on June 16, 2017 [Dkt. No. 903].

10. Attached hereto as Exhibit 8 is a true and correct copy of *Stipulation and Order Authorizing Official Committee of Unsecured Creditors to Prosecute Certain Claims on Behalf of the Estate* [Dkt. No. 813] entered on February 23, 2017 as related to Dkt. No. 803.

11. Attached hereto as Exhibit 9 is a true and correct copy of *Defendant's Responses to Plaintiff's Request for Admissions ("RFA")* dated September 7, 2018. Pursuant to the Defendant's Responses, Defendant admits it received \$610,604.31 of funds of the Debtor (RFA No. 1), was a creditor of the Debtor (RFA No. 5), and had a right to receive the Transfers for its benefit in satisfaction of an antecedent debt (RFA No. 3 and 4).

12. Attached hereto as Exhibit 10 is a true and correct copy of *Defendant's Responses to Plaintiff's First Set Of Interrogatories* dated November 6, 2017. Response to Interrogatory number 11 identifies a report from 2014, six months prior to the Preference Period, and the balance sheet in the Debtor's Schedules as the entirety of the Defendant's challenge to the Debtor's insolvency. The deadlines for presenting expert reports has passed. (See Adv. Docket No. 18)

13. Defendant admitted that it was not a secured creditor (RFA No. 8, Exhibit 9 hereto), but denied that by virtue of receipt of \$610,604.31, it would be paid more than would be received under a liquidation of the Debtor's business under Chapter 7 of the Bankruptcy Code. See Exhibit 9.

14. Attached hereto as Exhibit 11 is a true and correct copy of *Defendant's Responses to Plaintiff's Request For Production of Documents, Set One* dated November 6, 2017. Request No. 22 sought all documents to support Andrew's Int'l claim in its 7<sup>th</sup> Affirmative defense, that by virtue of the Transfers it did not receive more than it would have received in a Chapter 7 case. I have reviewed Defendant's document production and they include no claims analysis, assets, or documents evidencing a security interest and do not reference any such documents in written discovery responses.

15. Andrew's Int'l asserts the Debtor was solvent on the Petition Date since its Schedules evidence a positive net worth of \$38,930,091. Request No. 23 to *Plaintiff's Request For Production of Documents, Set One* dated November 6, 2017, sought all documents to support Andrew's claim in its 8<sup>th</sup> Affirmative defense, that the challenged transfers were made while the Debtor was solvent. The Response to Request No. 23 reference a general production of responsive documents, however within the Andrew's document production marked A000001- 001179, no financial records reflecting the Debtor's assets, liabilities (other than Andrew's invoices), claims, liquidation or financial condition of the Debtor is enclosed. Andrew's proffered no other argument or documents to support its claim of the Debtor's solvency; See Defendant's Responses to Plaintiff's First Set Of Interrogatories, Set One; # 11, attached hereto as Ex. 10.

16. Attached hereto as Exhibit 12 is a true and correct copy of the *Third Application Of Pachulski Stang Ziehl & Jones LLP For Allowance Of Interim Compensation For Services Rendered And Reimbursement Of Actual And Necessary Expenses Incurred*

*From January 1, 2016 Through June 30, 2016 (“PSZJ Third Fee Application”)* dated August 1, 2016 [Dkt. No. 722].

17. Attached hereto as Exhibit 13, is a true and correct copy of an invoice issued by Andrew’s International to the Debtor on December 31, 2014.

18. Attached hereto as Exhibit 14, is a true and correct copy of an email exchange dated February 25, 2015, between Andrew’s International and the Debtor and produced during discovery.

19. In discovery to date, the parties have exchanged documents which after application of 11 U.S.C. §547(c)(4), leave at issue net of the new value defense in excess of \$320,000.00.

20. I have conducted a search of the bankruptcy docket and located no no opposition or response to the Joint Emergency Application or the Order to Show Cause issued in February 2017, as filed by Andrew’s.

21. Attached hereto as Exhibit 15 is a true and correct copy of the *Complaint to Avoid Preferential Transfers and Recover Avoided Transfers or the Value Thereof* filed March 16, 2017 [Dkt. No. 1]

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 13<sup>th</sup> day of September, 2018 at Los Angeles, California.

/s/ Jeffrey P. Nolan  
Jeffrey P. Nolan

# **EXHIBIT 1**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

----- X  
In re :  
: Chapter 11  
FEDERATION EMPLOYMENT AND GUIDANCE :  
SERVICE INC. d/b/a FECS,<sup>1</sup> : Case No. 15-71074 (REG)  
: Debtor. :  
----- X

AFFIDAVIT OF SERVICE

State of California )  
 ) ss  
County of Los Angeles )

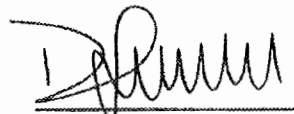
I, Darleen Sahagun, being duly sworn, depose and says:

I am employed by Rust Consulting/Omni Bankruptcy, located at 5955 DeSoto Avenue, Suite 100, Woodland Hills, CA 91367. I am over 18 years of age and am not a party to this above-captioned adversary proceeding.

I hereby certify that on February 3, 2017, I caused true and correct copies of the following document to be served via email to the parties listed in Exhibit A attached hereto:

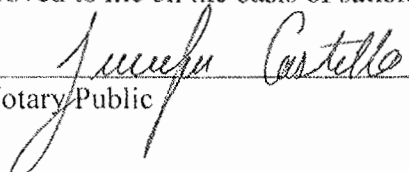
- Master Service List as of 02/03/17 [Docket No. 800]

Dated: February 7, 2017

  
\_\_\_\_\_  
Darleen Sahagun

{ State of California }  
{ } ss.  
{ County of Los Angeles }

Subscribed and sworn to (or affirmed) before me on this 7 day of Feb., 2017, by Darleen Sahagun, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

  
\_\_\_\_\_  
Notary Public



<sup>1</sup> The last four digits of the Debtor's federal tax identification number are 4000.

**EXHIBIT A**



Federation Employment and Guidance Service, Inc. dba F.E.G.S. - Service List to e-mail Recipients

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# **EXHIBIT 2**



UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X		
In re	:	Chapter 11
	:	
FEDERATION EMPLOYMENT AND	:	
GUIDANCE SERVICE, INC. d/b/a FECS,	:	Case No. 15-71074 (REG)
	:	
Debtor.	:	
-----X		

**STIPULATION AND ORDER AUTHORIZING OFFICIAL  
COMMITTEE OF UNSECURED CREDITORS TO PROSECUTE CERTAIN  
CLAIMS ON BEHALF OF THE ESTATE**

This stipulation and order (the “Stipulation and Order”) is entered into as of this 7th day of February 2017 by, between and among Federation Employment and Guidance Services, Inc. d/b/a FECS, the debtor and debtor in possession (the “Debtor”) in the above captioned case (the “Case”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), and the Official Committee of Unsecured Creditors of Federation Employment and Guidance Service, Inc. (the “Committee”) appointed in this case (collectively, the “Parties”) with respect to standing and authority to prosecute Committee/Estate Claims (as defined below). The Debtor and the Committee agree, subject to the approval of the Bankruptcy Court, as follows:

**RECITALS**

A. On March 18, 2015, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

B. On March 31, 2015, the U.S. Trustee appointed the Committee to represent all unsecured creditors of the Debtor pursuant to section 1102 of the Bankruptcy Code.

C. Since the appointment of the Committee, the Committee has investigated and evaluated potential claims and causes of action against the Debtor's former management and professionals, with a view towards assessing whether claims may be asserted by or on behalf of the Debtor's estate against the persons and entities who may be responsible, in whole or in part, for the Debtor's demise or who otherwise may have received a voidable transfer.

D. The Committee believes that the Debtor's estate may have claims against Gail Magaliff, the Debtor's former President, and Ira Machowsky, the Debtor's former executive Vice President, for among other things, avoidable transfers pursuant to chapter 5 of the Bankruptcy Code, negligence and breaches of fiduciary duty (any such claims, "Officer Claims").

E. The Committee believes that the Debtor's estate may have claims against Loeb & Troper LLP, the Debtor's former accountant/auditor, for among other things, negligence and aiding and abetting breaches of fiduciary duty (any such claims, "Accountant Claims").

F. The Committee believes that the Debtor's estate may have claims against various transferees to avoid and recover preferential transfers pursuant to sections 547 and 550 of the Bankruptcy Code (any such claims, "Preference Claims" and, together with Officer Claims and Accountant Claims, the "Committee/Estate Claims").

G. The Committee has requested, as being in the best interest of the Debtor's estate and necessary and beneficial to the fair and efficient administration of the Case, that the Debtor consent to the Committee's statutory authority to prosecute the Committee/Estate Claims on behalf of the Debtor's estate.

**NOW, THEREFORE IT IS HEREBY STIPULATED AND AGREED,**

subject to the approval of the Bankruptcy Court, as follows:

1. The Committee shall be, and hereby is, granted leave, standing, and authority to commence, prosecute, and settle any Committee/Estate Claims with full rights and privileges of the Debtor, with any and all recoveries to be for the benefit of the Debtor's estate; provided, however, that the Debtor shall not settle any of the Committee/Estate Claims without the Committee's consent.

2. This Stipulation may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**[Remainder of page intentionally left blank]**

AGREED AND ACCEPTED:

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Ilan D. Scharf

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Counsel to the Official Committee of  
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GARFUNKEL WILD, P.C.

/s/ Burton S. Weston

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Counsel to the Debtor

SO ORDERED:

# **EXHIBIT 3**

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*Counsel to the Official  
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**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK**

-----X

In re:

FEDERATION EMPLOYMENT AND GUIDANCE  
SERVICE, INC. d/b/a FECS,<sup>1</sup>

Chapter 11  
Case No. 15-71074 (REG)

Debtor.

-----X

**JOINT EMERGENCY APPLICATION FOR AN ORDER TO  
SHOW CAUSE AND ENTRY OF A STIPULATION AND ORDER  
AUTHORIZING OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
TO PROSECUTE CERTAIN CLAIMS ON BEHALF OF THE ESTATE**

Federation Employment and Guidance Service, Inc. d/b/a FECS (“**FECS**” or the  
“**Debtor**”), as debtor and debtor-in-possession in this Chapter 11 case (the “**Chapter 11 Case**”),  
by and through its attorneys, Garfunkel Wild, P.C., and the Official Committee of Unsecured  
Creditors (the “**Committee**”, and collectively with the Debtor, the “**Movants**”), by and through

---

<sup>1</sup> The last four digits of the Debtor’s federal tax identification number are 4000.

its attorneys, Pachulski Stang Ziehl & Jones, LLP, respectfully submits this application (the “**Application**”), pursuant to §§ 105(a), 1103(c)(5), and 1109(b) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 9006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 9077-1 of the Local Bankruptcy Rules for the Eastern District of New York for the entry of (i) an Order to Show Cause (the “**OSC**”), substantially in the form annexed hereto as Exhibit A, requiring any and all parties in interest to show cause why a certain Stipulation and Order (the “**Stipulation**”), annexed hereto as Exhibit B, by and between the Debtor and the Committee authorizing the Committee to prosecute certain claims on behalf of the Debtor’s estate should not be entered in the Chapter 11 Case; and (ii) an Order approving the Stipulation. In support of the Application, the Movants respectfully state the following:

#### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Application is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

#### **BACKGROUND**

2. On March 18, 2015 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor is authorized to operate its business and/or continue to manage its property as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

3. On March 31, 2015, the United States Trustee for the Eastern District of New York (the “**U.S. Trustee**”) appointed the Committee pursuant to § 1102 of the Bankruptcy Code. The Committee has engaged Pachulski Stang Ziehl & Jones LLP as its counsel. No trustee or examiner has yet been appointed in this Chapter 11 Case.

4. The factual background relating to the Debtor's commencement of this Chapter 11 Case, including its business operations, capital and debt structure, and the need to transfer all of its programs and sell substantially all of its assets, is set forth in detail in the Amended Affidavit of Kristin Woodlock Pursuant to Local Rule 1007 and in Support of First Day Motions (the "**Woodlock Affidavit**"), filed on the Petition Date and incorporated herein by reference.

#### **FACTS RELEVANT TO THE APPLICATION**

5. Since the appointment of the Committee, the Committee has investigated and evaluated potential claims and causes of action for the avoidance of prepetition transfers against numerous creditors as well as potential claims and causes of action against the Debtor's former management and professionals.

6. The Committee believes that the Debtor's estate may have claims against Gail Magaliff, the Debtor's former President, and Ira Machowsky, the Debtor's former executive Vice President, for among other things, avoidable transfers pursuant to chapter 5 of the Bankruptcy Code, negligence and breaches of fiduciary duty (any such claims, "**Officer Claims**").

7. The Committee believes that the Debtor's estate may have claims against Loeb & Troper LLP, the Debtor's former accountant/auditor, for among other things, negligence and aiding and abetting breaches of fiduciary duty (any such claims, "**Accountant Claims**").

8. The Committee believes that the Debtor's estate may have claims against various transferees to avoid and recover preferential transfers pursuant to §§ 547 and 550 of the Bankruptcy Code (any such claims, "**Preference Claims**" and, together with Officer Claims and Accountant Claims, the "**Committee/Estate Claims**").

9. The Committee has requested the authority from the Debtor to prosecute the Committee/Estate Claims on behalf of the Debtor's estate, and upon review of the Committee's



arguments and applicable law, the Debtor has determined to comply with the request. The Committee has undertaken the laboring oar in investigating potential claims and the Committee's prosecution of such claims on behalf of the Debtor's estate would certainly promote efficiencies and avoid duplication of costs.

10. Accordingly, the Movants entered into the Stipulation which, subject to approval by the Court, grants the Committee leave, standing, and authority to commence, prosecute, and settle any Committee/Estate Claims with full rights and privileges of the Debtor, with any and all recoveries to be for the benefit of the Debtor's estate, pursuant to the terms and conditions of the Stipulation.

#### **RELIEF REQUESTED**

11. By this Application the Movants respectfully request entry of (i) the OSC which (a) schedules an emergency hearing on approval of the Stipulation; (b) sets forth the deadline for any parties in interest to show cause why the Stipulation should not be entered by the Court; and (c) sets forth the manner of notice to be provided by the Debtor, and (ii) an Order approving the Stipulation.

#### **BASIS FOR RELIEF REQUESTED**

##### **I. The Committee Should be Authorized to Prosecute the Committee/Estate Claims**

12. It is well settled that §§ 1103(c)(5) and 1109(b) of the Bankruptcy Code provide a qualified right to a creditors' committees to commence actions in the name of the debtor in possession with the approval of the bankruptcy court. See In re STN Enters., 779 F.2d 901, 904 (2d Cir. 1985) ("Most bankruptcy courts that have considered the question have found an implied, but qualified, right for creditor' committees to initiate adversary proceedings in the name of the debtor in possession under 11 U.S.C. §§ 1103(c)(5) and 1109(b) ... or in reliance on

an implied continuation of creditors' committee powers under the pre-1978 Code.”) (internal citations omitted).

13. The Second Circuit has held that “a creditors’ committee may acquire standing to pursue the debtor's claims if (1) the committee has the consent of the debtor in possession or trustee, and (2) the court finds that suit by the committee is (a) in the best interest of the bankruptcy estate, and (b) is ‘necessary and beneficial’ to the fair and efficient resolution of the bankruptcy proceedings. This approach permits a reasoned and practicable division of labor between the creditors’ committee and the debtor in possession or trustee, while also providing bankruptcy courts with significant authority both to manage the litigation and to check any potential for abuse by the parties.” In re Commodore Int’l Ltd., 262 F.3d 96, 100 (2d Cir. 2001) (internal citations omitted) (quoting In re Spaulding Composites Co., 207 B.R. 899, 904 (9th Cir. BAP 1997)).

14. Thus, the Second Circuit applies a two prong test in giving standing to a creditors’ committee to prosecute the debtor’s claims; consent by the debtor and showing both that suit by the committee is in the best interest of the debtor’s estate and necessary and beneficial to the fair and efficient resolution of the bankruptcy proceedings. In re Housecraft Indus. USA, Inc., 310 F.3d 64, 71 (2d Cir. 2002).

15. Here, after determining that efficiencies favor the Committee prosecuting claims for the benefit of the Debtor’s estate, and that no basis exists to deny the Committee’s request for authority, the Debtor has given explicit consent to the Committee to prosecute the Committee/Estate Claims on behalf of the Debtor’s estate. The Movants submit that granting the Committee standing is both in the best interest of the Debtor’s estate and is necessary and beneficial to the efficient resolution of the Chapter 11 Case. In determining the potential benefit

to the estate, a bankruptcy court should weigh the probability of success and the propriety, in terms of cost, of the creditors' committee being authorized to bring suit. See In re America's Hobby Ctr., Inc., 223 B.R. 275, 284 (Bankr. S.D.N.Y. 1998) (stating that the bankruptcy court must "consider whether there is a fair chance that the benefits to be obtained from litigation will outweigh the cost"). The Committee has investigated the bases of, and the facts and circumstances surrounding, the Committee/Estate Claims. The Debtor believes that, if the Committee/Estate Claims are brought, the Committee is best positioned to prosecute the such claims, as the Debtor would need to spend considerable time and resources duplicating the Committee's efforts. Moreover, litigating the Committee/Estate Claims would redound to the benefit of unsecured creditors generally, thus facilitating the efficient resolution of the Chapter 11 Case.

## **II. Entry Of an Order to Show Cause is Necessary and Proper**

16. Pursuant to § 546(a)(1)(A), an action or proceeding §§ 544, 545, 547, 548, or 553 of the Bankruptcy Code may not be commenced after 2 years after the entry of the order for relief. 11 U.S.C. § 546. Pursuant to § 301 of the Bankruptcy Code, the commencement of a voluntary case under the Bankruptcy Code constitutes an order for relief. 11 U.S.C. § 301. Thus, March 18, 2017, 2 years from the Petition Date, is the deadline to commence actions or proceedings under the relevant sections of chapter 5 of the Bankruptcy Code.

17. Accordingly, the Movants respectfully submit that proceeding by an application for an order to show cause is necessary and proper because the deadline to commence actions or proceedings is just over a month from the date of this Application, it would otherwise be impossible to seek relief pursuant to a motion requiring notice and a hearing pursuant to Bankruptcy Rule 2002.

**NOTICE**

18. Notice of this Motion will be given to: (a) the Office of the United States Trustee for the Eastern District of New York; (b) all parties in interest who have requested notice pursuant to Bankruptcy Rule 2002; and (c) all other parties required to be served in accordance with the Case Management Order entered by this Court on April 17, 2015 [Docket No. 160] (collectively, the “**Notice Parties**”) by electronic mail and/or overnight mail. The Movants shall supplement such notice as directed by the Court in the OSC. The Movants submit that no other notice need be given.

**NO PRIOR RELIEF**

19. A copy of the Stipulation was filed on the docket and discussed generally at a hearing on February 6, 2017. Otherwise, no prior request for the relief sought in this Motion has been made to any other court.

**WHEREFORE**, the Movants respectfully request that the Court enter the OSC, attached hereto as Exhibit A, granting the relief requested herein, and granting the Debtor such other and further relief as is just and proper.

Dated: February 14, 2017  
Great Neck, New York

**GARFUNKEL WILD, P.C.**

By: /s/ Burton S. Weston  
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Telephone: (516) 393-2200  
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Dated: February 14, 2017  
New York, New York

**PACHULSKI STANG ZIEHL & JONES LLP**

By: /s/ Ilan D. Scharf  
Robert J. Feinstein, Esq.  
Ilan D. Scharf, Esq.  
780 Third Avenue, 34th Floor  
New York, New York 10017  
Telephone: (212) 561-7700  
Facsimile: (212) 561-7777

**EXHIBIT A**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK**

-----X  
In re:

FEDERATION EMPLOYMENT AND GUIDANCE  
SERVICE INC. d/b/a/ FECS,

Chapter 11  
Case No. 15-71074 (REG)

Debtor.  
-----X

**ORDER TO SHOW CAUSE**

Upon the emergency application dated February 14, 2017 (the “**Application**”) of Federation Employment and Guidance Service, Inc. d/b/a FECS (“**FECS**” or the “**Debtor**”) as a Chapter 11 debtor and debtor-in-possession in the above referenced Chapter 11 Case and the Official Committee of Unsecured Creditors (the “**Committee**”, and collectively with the Debtor, the “**Movants**”) seeking entry of (i) an Order to Show Cause (a) scheduling an emergency hearing on approval of the Stipulation<sup>1</sup>; (b) setting forth the deadline for any parties in interest to show cause why the Stipulation should not be entered by the Court; and (c) setting forth the manner of notice to be provided by the Movants; and (ii) an Order approving the Stipulation; and it appearing that good cause exists for granting an Order to Show Cause pursuant to Rule 9077-1 of the Local Bankruptcy Rules for the Eastern District of New York; it is hereby

**ORDERED**, that any party in interest is directed to show cause before the Honorable Robert E. Grossman, United States Bankruptcy Judge, United States Bankruptcy Court for the Eastern District of New York (the “**Bankruptcy Court**”), 290 Federal Plaza, Central Islip, New York 11722, Room 860, on February \_\_, 2017 at \_\_:\_\_ .m. Eastern Time, why the Stipulation should not be entered granting the Committee leave, standing, and authority to commence, prosecute, and settle any Committee/Estate Claims with the full rights and privileges of the Debtor, with any and all recoveries to be for the benefit of the Debtor’s estate, subject to the terms of the Stipulation; and it is further

**ORDERED**, that responses, if any, to the Application must be made in writing, stating in detail the reason for any objection, and must be filed with the Clerk of the Bankruptcy Court,

<sup>1</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Application.

with paper copies delivered to Judge Grossman's Chambers, and served upon: (i) Garfunkel Wild, P.C., Counsel for the Debtor and Debtor in Possession, bweston@garfunkelwild.com, Attn: Burton S. Weston, Esq., Adam T. Berkowitz, Esq., and Phillip Khezri, Esq.; (ii) Pachulski Stang Ziehl & Jones, LLP, counsel to the Official Committee of Unsecured Creditors, ischarf@pszjlaw.com, Attn: Robert J. Feinstein, Esq. and Ilan D. Scharf, Esq; and (iii) the United States Trustee for the Eastern District of New York, Alfonse D'Amato Federal Courthouse, Stan.Y.Yang@usdoj.gov, Attn: Stan Y. Yang, Esq., so that they are actually received by the aforementioned parties no later than \_\_:\_\_\_.m. on February \_\_, 2017; and it is further

**ORDERED**, that responses not timely served and filed may not be considered by the Court; and it is further

**ORDERED**, that the Movants shall serve this Order to Show Cause, together with the Application, to the extent not already done, by overnight mail or electronic mail on the Notice Parties, on or before February \_\_, 2017; and it is further

**ORDERED**, that service in accordance with this Order to Show Cause shall constitute good and sufficient service and adequate notice; and it is further

**ORDERED**, that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order to Show Cause.



**EXHIBIT B**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X		
In re	:	Chapter 11
	:	
FEDERATION EMPLOYMENT AND	:	
GUIDANCE SERVICE, INC. d/b/a FECS,	:	Case No. 15-71074 (REG)
	:	
Debtor.	:	
-----X		

**STIPULATION AND ORDER AUTHORIZING OFFICIAL  
COMMITTEE OF UNSECURED CREDITORS TO PROSECUTE CERTAIN  
CLAIMS ON BEHALF OF THE ESTATE**

This stipulation and order (the “Stipulation and Order”) is entered into as of this 7th day of February 2017 by, between and among Federation Employment and Guidance Services, Inc. d/b/a FECS, the debtor and debtor in possession (the “Debtor”) in the above captioned case (the “Case”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), and the Official Committee of Unsecured Creditors of Federation Employment and Guidance Service, Inc. (the “Committee”) appointed in this case (collectively, the “Parties”) with respect to standing and authority to prosecute Committee/Estate Claims (as defined below). The Debtor and the Committee agree, subject to the approval of the Bankruptcy Court, as follows:

**RECITALS**

A. On March 18, 2015, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

B. On March 31, 2015, the U.S. Trustee appointed the Committee to represent all unsecured creditors of the Debtor pursuant to section 1102 of the Bankruptcy Code.

C. Since the appointment of the Committee, the Committee has investigated and evaluated potential claims and causes of action against the Debtor's former management and professionals, with a view towards assessing whether claims may be asserted by or on behalf of the Debtor's estate against the persons and entities who may be responsible, in whole or in part, for the Debtor's demise or who otherwise may have received a voidable transfer.

D. The Committee believes that the Debtor's estate may have claims against Gail Magaliff, the Debtor's former President, and Ira Machowsky, the Debtor's former executive Vice President, for among other things, avoidable transfers pursuant to chapter 5 of the Bankruptcy Code, negligence and breaches of fiduciary duty (any such claims, "Officer Claims").

E. The Committee believes that the Debtor's estate may have claims against Loeb & Troper LLP, the Debtor's former accountant/auditor, for among other things, negligence and aiding and abetting breaches of fiduciary duty (any such claims, "Accountant Claims").

F. The Committee believes that the Debtor's estate may have claims against various transferees to avoid and recover preferential transfers pursuant to sections 547 and 550 of the Bankruptcy Code (any such claims, "Preference Claims" and, together with Officer Claims and Accountant Claims, the "Committee/Estate Claims").

G. The Committee has requested, as being in the best interest of the Debtor's estate and necessary and beneficial to the fair and efficient administration of the Case, that the Debtor consent to the Committee's statutory authority to prosecute the Committee/Estate Claims on behalf of the Debtor's estate.

**NOW, THEREFORE IT IS HEREBY STIPULATED AND AGREED,**

subject to the approval of the Bankruptcy Court, as follows:

1. The Committee shall be, and hereby is, granted leave, standing, and authority to commence, prosecute, and settle any Committee/Estate Claims with full rights and privileges of the Debtor, with any and all recoveries to be for the benefit of the Debtor's estate; provided, however, that the Debtor shall not settle any of the Committee/Estate Claims without the Committee's consent.

2. This Stipulation may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**[Remainder of page intentionally left blank]**

AGREED AND ACCEPTED:

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Ilan D. Scharf

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Counsel to the Official Committee of  
Unsecured Creditors

GARFUNKEL WILD, P.C.

/s/ Burton S. Weston

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Counsel to the Debtor

SO ORDERED:

# **EXHIBIT 4**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK**

-----X  
In re:

FEDERATION EMPLOYMENT AND GUIDANCE  
SERVICE INC. d/b/a/ FECS,

Chapter 11  
Case No. 15-71074 (REG)

Debtor.  
-----X

**ORDER TO SHOW CAUSE**

Upon the emergency application dated February 14, 2017 (the “**Application**”) of Federation Employment and Guidance Service, Inc. d/b/a FECS (“**FECS**” or the “**Debtor**”) as a Chapter 11 debtor and debtor-in-possession in the above referenced Chapter 11 Case and the Official Committee of Unsecured Creditors (the “**Committee**”, and collectively with the Debtor, the “**Movants**”) seeking entry of (i) an Order to Show Cause (a) scheduling an emergency hearing on approval of the Stipulation<sup>1</sup>; (b) setting forth the deadline for any parties in interest to show cause why the Stipulation should not be entered by the Court; and (c) setting forth the manner of notice to be provided by the Movants; and (ii) an Order approving the Stipulation; and it appearing that good cause exists for granting an Order to Show Cause pursuant to Rule 9077-1 of the Local Bankruptcy Rules for the Eastern District of New York; it is hereby

**ORDERED**, that any party in interest is directed to show cause at a hearing before the Honorable Robert E. Grossman, United States Bankruptcy Judge, United States Bankruptcy Court for the Eastern District of New York (the “**Bankruptcy Court**”), 290 Federal Plaza, Central Islip, New York 11722, Room 860, on February 21, 2017 at 10:00 a.m. Eastern Time (“**Hearing**”), why the Stipulation should not be entered granting the Committee leave, standing, and authority to commence, prosecute, and settle any Committee/Estate Claims with the full rights and privileges of the Debtor, with any and all recoveries to be for the benefit of the Debtor’s estate, subject to the terms of the Stipulation; and it is further

**ORDERED**, that the Court shall consider oral responses to the Application at the Hearing; and it is further

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<sup>1</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Application.

**ORDERED**, that the Movants shall serve this Order to Show Cause, together with the Application, to the extent not already done, by overnight mail or electronic mail on the Notice Parties, on or before February 15, 2017, and the Movants shall file an affidavit of service with the Court on or before February 17, 2017 at 12:00 p.m.; and it is further

**ORDERED**, that service in accordance with this Order to Show Cause shall constitute good and sufficient service and adequate notice; and it is further

**ORDERED**, that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order to Show Cause.

**Dated: Central Islip, New York  
February 15, 2017**



A handwritten signature in black ink, appearing to read "Robert E. Grossman".

**Robert E. Grossman  
United States Bankruptcy Judge**



# **EXHIBIT 5**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

----- x  
In re :  
: Chapter 11  
FEDERATION EMPLOYMENT AND GUIDANCE :  
SERVICE INC. d/b/a FECS,<sup>1</sup> : Case No. 15-71074 (REG)  
: Debtor. :  
----- x

**AFFIDAVIT OF SERVICE**

State of California )  
 ) ss  
County of Los Angeles )

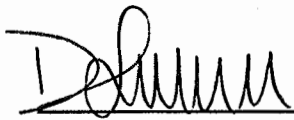
I, Darleen Sahagun, being duly sworn, depose and says:

I am employed by Rust Consulting/Omni Bankruptcy, located at 5955 DeSoto Avenue, Suite 100, Woodland Hills, CA 91367. I am over 18 years of age and am not a party to this above-captioned adversary proceeding.

I hereby certify that on February 15, 2017, I caused true and correct copies of the following document to be served (i) via email to the parties listed in **Exhibit A** and (ii) via overnight mail by placing the documents in a sealed envelope, affixing a pre-paid air bill, and delivering envelopes to an overnight courier location in Los Angeles, California to the parties listed on the Service List in **Exhibit B** attached hereto:

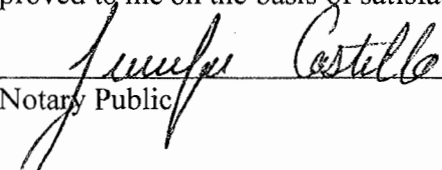
- **Joint Emergency Application for an Order to Show Cause and Entry of a Stipulation and Order Authorizing Official Committee of Unsecured Creditors to Prosecute Certain Claims on Behalf of The Estate [Docket No. 807]**
- **Order to Show Cause [Docket No. 808]**

Dated: February 16, 2017

  
\_\_\_\_\_  
Darleen Sahagun

{ State of California }  
{ } ss.  
{ County of Los Angeles }

Subscribed and sworn to (or affirmed) before me on this 16 day of Feb., 2017, by Darleen Sahagun, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

  
\_\_\_\_\_  
Notary Public



<sup>1</sup> The last four digits of the Debtor's federal tax identification number are 4000.

**EXHIBIT A**

Federation Employment and Guidance Service , Inc. dba F.E.G.S. - Service List to e-mail Recipients

Served 2/15/2017

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Federation Employment and Guidance Service, Inc. dba F.E.G.S. - Service List to e-mail Recipients

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Parties Served: 72

**EXHIBIT B**

Federation Employment and Guidance Service , Inc. dba F.E.G.S. - Overnight Mail

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ALBANY NY 12205

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ALBANY NY 12227

OFFICE OF THE UNITED STATES TRUSTEE  
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560 FEDERAL PLAZA  
CENTRAL ISLIP NY 11722

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ROD ALBERTS, BUILDING MGR.  
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GARDEN CITY NY 11530

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EXECUTIVE DIRECTOR  
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HAUPPAUGE NY 11788

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CORPORATE TAX ADMINISTRATION  
101 BARCLAY STREET -7W  
RE: SUFFOLK COUNTY IND. DEV. AGENCY  
NEW YORK NY 10286

THE BANK OF NEW YORK (TRUSTEE)  
CORPORATE TRUST ADMINISTRATION  
101 BARCLAY STREET -7W  
RE: NEW YORK CITY INDUSTRIAL AGENCY  
NEW YORK NY 10286

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Parties Served: 28

# **EXHIBIT 6**



Page 1

1 UNITED STATES BANKRUPTCY COURT

2 EASTERN DISTRICT OF NEW YORK

3 Case No. 8-15-71074-reg

4 - - - - -x

5 In the Matter of:

6

7 FEDERATION EMPLOYMENT AND GUIDANCE SERVICE, INC.,

8

9 Debtor.

10

11 - - - - -x

12

13 United States Bankruptcy Court

14 290 Federal Plaza

15 Central Islip, New York 11722

16

17 February 6, 2017

18 1:39 PM

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21 B E F O R E:

22 HON. ROBERT E. GROSSMAN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: UNKNOWN

1 HEARING re [156] ADJ Status Conference

2

3 HEARING re [779] Order Approving Bid Procedures for the Sale of  
4 the Debtors Real Property located at 21 Duryea Place, Brooklyn,  
5 NY, Scheduling an Auction and a Sale [764] Motion for Sale of  
6 Property at 21 Duryea Place, Brooklyn New York Free and clear  
7 of all liens, claims and encumbrances by Burton S Weston on  
8 behalf of Federation Employment and Guidance Service, Inc.

9

10 HEARING re [793] Motion to Authorizing the Assumption and  
11 Assignment of a Certain Unexpired Residential Real Property  
12 Lease to the Jewish Board for Family and Children Services  
13 (JBFCF) by Burton S Weston on behalf of Federation Employment  
14 and Guidance Service, Inc.

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25 Transcribed by: Sonya Ledanski Hyde

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P R O C E E D I N G S

CLERK: Matters Number 56 through 58, Federation  
Employment & Guidance Service, Inc.

MR. WESTON: Good afternoon, Your Honor. Burton  
Weston --

THE COURT: Anybody on the phone?

MR. WESTON: -- Adam Berkowitz, Garfunkel Wild.

THE COURT: I just was checking if we have people on  
the phone.

MR. WESTON: Oh.

THE COURT: Go ahead.

MR. WESTON: Burton Weston, Adam Berkowitz, Garfunkel,  
Wild, on behalf of the Debtor FECS.

MR. SCHARF: Ilan Scharf, Pachulski Stank Ziel --

MR. AGUDELO: Good afternoon, Your Honor, I'm  
Jonathan Agudelo,

MR. SCHARF: -- on behalf of Committee.

MR. AGUDELO: -- here on behalf of the Jewish Board  
of Family & Children Service.

CLERK: Hold on please.

MAN 1: One more time?

THE COURT: I don't know. I know you're here.

MAN 1: Oh, good. Thank you.

MR. YANG: Good afternoon, Your Honor. Stan Yang for  
the United States Trustee.

1 CLERK: Please state your phone appearance on  
2 Federation.

3 MR. AGUDELO: Good afternoon. Jonathan Agudelo from  
4 Ropes & Gray, on behalf of the Jewish Board of Family &  
5 Children Service - Tele/Video.

6 MS. HARDMAN: Good afternoon, Your Honor.

7 MS. GU: Good afternoon. Oh, I'm sorry. Good  
8 afternoon, Your Honor. Ligea Gu, Halperin Battaglia Benzija,  
9 on behalf of the New York State Department of Labor.

10 MS. HARDMAN: Good afternoon. Carrie Hardman from  
11 Winston & Strawn, on behalf of OPWDD and OMH.

12 MS. DENNISON: Good afternoon, Your Honor. Carol  
13 Dennison, on behalf of DAVINI.

14 MS. SPIGEL: Good afternoon, Your Honor. Robin  
15 Spigel, Willkie Farr & Gallagher, counsel for FOJP Services  
16 Corporation.

17 CLERK: That's it.

18 THE COURT: Okay.

19 MR. WESTON: Good afternoon, Your Honor. On the  
20 calendar today there are two motions, one to approve a sale of  
21 certain vacant real property that FECS owned on Duryea Place in  
22 Brooklyn, a motion to assume and assign a lease on an adjacent  
23 property that's owned by an independent third party, as well as  
24 a status conference.

25 If Your Honor is okay, I'd like to proceed with the

1 motions first and give you a status after I'm done.

2 THE COURT: Sure.

3 MR. WESTON: First, with respect to the sale motion,  
4 Your Honor, as I said, FECS is the owner of a vacant parcel of  
5 real property located at 21 Duryea Place in Brooklyn. It is a  
6 parking lot containing approximately 6500 square feet of space.  
7 It's adjacent to a building that's owned by a third-party,  
8 which is leased to FECS as well. And at that property, it has  
9 housed a residential behavioral program that was transferred to  
10 and is currently being administered by JBSCS, and indeed is the  
11 subject of the second motion before Your Honor this afternoon.

12 We filed this motion back in November, November 17th,  
13 seeking first the entry of a bid procedures order and  
14 thereafter, approval of a sale. The bid procedures order was  
15 entered on the 19th of December. We served the motion --  
16 excuse me, the order of notice of auction and a sale hearing on  
17 all parties required by the Court, including parties who had  
18 previously expressed interest in the property.

19 The auction was held on February 2 and we seek the  
20 Court's approval of the sale to David Levitan free and clear of  
21 liens. He was the successful bidder at \$1,515,000, which was  
22 \$515,000 over the original stocking horse bid.

23 Just by way of background, Your Honor, we had earlier  
24 retained Kalmon Dolgin in this case to act as exclusive real  
25 estate broker to market the property. Part of the issue we



1 had, and I think I've elaborated on it to the Court previously,  
2 is this parcel is part of the same zoning lot with the third-  
3 party owned property adjacent to it. So, a problem we had in  
4 procuring bids is that any buyer really didn't know what kind  
5 of development right it was ultimately acquiring with respect  
6 to the vacant lot.

7 So, while we were developing alternative methods of  
8 disposing of the properties, having received no bids through  
9 Kalmon Dolgin, it turned out we received an unsolicited bid  
10 from Mr. Levitan.

11 Mr. Levitan, it turned out, was also the contract  
12 vendee, had a contract to purchase the adjacent building which  
13 houses the JBSCS program. So, he was going to be the joint  
14 buyer -- joint owner of both pieces of property.  
15 We negotiated a purchase and sale agreement for \$1 million,  
16 subject to higher and better bids, and he became the stalking  
17 horse.

18 The bid procedures order set January 27th as the last  
19 date to submit bids and we did receive one other bid from Kings  
20 Equity Group, LLC, at \$1,050,000, which was the minimum overbid  
21 required, and all other elements of that contract and bid were  
22 consistent with the requirements of the bid procedures. And  
23 the Debtor, in consultation with the Committee, qualified that  
24 bid as an additional bid -- as a qualified bid, I should -- I'm  
25 sorry.

1           The auction, as I indicated earlier, proceeded on  
2           February 2. It was rather spirited, to say the least, and Mr.  
3           Levitan was the successful bidder at \$1,515,000. And the  
4           Committee and Debtor designated King Equity Group's bid of \$1.5  
5           million as the backup bid.

6           Mr. Levitan had been granted a breakup fee of  
7           \$25,000, and that will be adjusted at the closing, as they were  
8           bidding on an apples-to-apples basis. And as required by the  
9           bid procedures --

10          THE COURT: What do you mean, adjusted?

11          MR. WESTON: He'll be getting a \$25,000 credit at the  
12          closing against the purchase price, which is still higher and  
13          better than they would have received if we got \$1.5 million.

14          THE COURT: I know, but is that --

15          MR. WESTON: Yeah, that was what our contractor --

16          THE COURT: Am I out of this so long I don't  
17          remember? We have a breakup fee, the breakup fee, if the  
18          original bidder who was given the breakup fee is successful, he  
19          gets a credit for the amount of the breakup the?

20          MR. WESTON: He does because they, of course, were  
21          bidding on an apples-to-apples basis. In other words, his bid  
22          still comes out higher than the second bid. That's how we did  
23          it in Jerome, that's how we did it in (indiscernible), and we  
24          did it here. So, his net bid --

25          THE COURT: Go ahead.

1 MR. WESTON: Okay. In any event, he has supplemented  
2 his deposit such that the deposit now represents --

3 THE COURT: Well, I'm just curious. The other guy  
4 bid \$1.5 million?

5 MR. WESTON: Correct. We would've had to pay a  
6 breakup fee, so it would have been \$1,475,000.

7 THE COURT: But if you give Levitan back \$25,000, he  
8 bid --

9 MR. WESTON: It's still --

10 THE COURT: -- \$1,495,000.

11 MR. WESTON: \$1,495,000. It's higher. Then we would  
12 have received --

13 THE COURT: It's funny, I just don't remember that's  
14 how breakup fees work.

15 MR. WESTON: Yeah.

16 THE COURT: I'll take your word for it, but...

17 MR. WESTON: So, we seek approval of the winning bid.  
18 As you know, the property is no longer needed by the Debtor.  
19 So at least we had -- we believe, that the sale is certainly in  
20 the best interests of the estate and the estate's creditors at  
21 this point.

22 We think the price that we received is fair and  
23 reasonable, certainly in consideration of the zoning issues  
24 that we confronted, the extent of the marketing process that we  
25 ran for over a year with respect to the property, the

1 competitive bid process that we ultimately underwent. We  
2 believe that the offer is fair and reasonable and in our  
3 estimate, the best that we could receive.

4 We are looking to sell, free and clear of liens.  
5 There are indeed no mortgages, no mechanic's liens --

6 THE COURT: There's not going to be any caveat in my  
7 order with granting the buyer of this any right greater than he  
8 currently would get as a buyer outside of bankruptcy?

9 MR. WESTON: That's correct. The same form of order  
10 that we had submitted before.

11 THE COURT: Because I don't want to fool with the  
12 City and what he does to the property and a million other  
13 things.

14 MR. WESTON: Right.

15 THE COURT: I'll look at the order.

16 MR. WESTON: Okay.

17 THE COURT: Anybody want to be heard on this? The  
18 Court will grant the motion.

19 MR. WESTON: Thank you, Your Honor. Next, Your Honor,  
20 is a motion to assume and assign the lease of the adjacent  
21 building at 21 Duryea Place. FECS was the long-term lessee of  
22 that building, in which was housed a residential program. The  
23 program, early in the case back in June of 2015, was, together  
24 with all of the other behavioral health programs, assigned to  
25 JBSCS. JBSCS, you'll recall, assumed a number of real property

1 leases in connection with those program transfers.

2           Given the long-term nature of this lease and the  
3 uncertainty that JBSCS had as to how this was going to fit into  
4 its long-term strategies and long-term plan, there was no  
5 assumption and assignment at that point in time of this lease.  
6 It's a residential lease we have, through confirmation, to  
7 assume. They have now made the determination that they want to  
8 assume the lease. It extends through 2033.

9           The lease is current. We have been paying all  
10 obligations. JBSCS has been granted use --

11           THE COURT: Who's the lessor?

12           MR. WESTON: FECS is the lessor. The lessor -- I'm  
13 sorry -- is Marvin Beinhorn. It's 21 Duryea Place, LLC, is the  
14 lessor.

15           THE COURT: And he's agreeing to -- he's not  
16 objecting to this?

17           MR. WESTON: No objection. The lease currently is at  
18 a rate of about \$960,000 per year, with increases over the term  
19 of the lease, ratchets up to about \$1.2 million on an annual  
20 rent basis. As I said, we are current in our rent. Indeed,  
21 rent has been paid, as well as taxes, through February 28th.

22           The proposed motion seeks an order which requires  
23 JBSCS to remit the security deposit to us and replace the  
24 security deposit with the new landlord. We've been in touch  
25 with both parties. The form of order has been circulated both

1 to JBSCS and the landlord.

2 THE COURT: And these are leases to what?

3 Residential apartments --

4 MR. WESTON: There are 39 rooms that house a young  
5 adult and rehabilitation program. There are 39 beds housed in  
6 the building, and these are youths with behavioral issues --

7 THE COURT: And we've already transferred the  
8 programs?

9 MR. WESTON: We've transferred the program --

10 THE COURT: So these have --

11 MR. WESTON: I'm sorry.

12 THE COURT: These are the units the clients occupy?

13 MR. WESTON: Correct. This is the units that --

14 THE COURT: And it's not --

15 MR. WESTON: -- house the residents in the programs.

16 THE COURT: And it's adjacent to what we just sold?

17 MR. WESTON: Correct.

18 THE COURT: And is it owned by the same people who  
19 bought...?

20 MR. WESTON: The party who was the bidder on the  
21 vacant property is under contract to buy this building as well.  
22 And indeed, I think that closing is occurring today. He has --

23 THE COURT: Once he assumes this lease, can he  
24 ultimately -- will be the lessor and lessee at that point?

25 MR. WESTON: Correct. No, lessor. JBSCS will be the

1 lessee. Third party will continue to own the building.

2 THE COURT: Well, aren't we assigning --

3 MR. WESTON: No, we're assigning the lease to JBSCS.

4 THE COURT: Which is what, the Jewish Welfare?

5 MR. WESTON: Jewish Board who is administering the  
6 program.

7 THE COURT: So, we're pretty certain that if the guy  
8 wants to do an assemblage you can't kick these people out?

9 MR. WESTON: They've consented to the motion, but  
10 they've been served with it, they're aware of it, he's got no  
11 objection to the motion.

12 THE COURT: All right. I'm sure we'll see this one  
13 again. Anybody want to be heard on this? How many more years  
14 does your lease have?

15 MR. WESTON: 2033. That's about another 16 years.

16 THE COURT: He'll be the lessee; the Jewish Welfare  
17 Board will be the lessor?

18 MR. WESTON: No. The Jewish Board will be the  
19 lessee.

20 THE COURT: Lessee.

21 MR. WESTON: They're administering the program that  
22 will house the tenants. The owner of the building, who is  
23 acquiring the building today, will be the lessor.

24 THE COURT: But he can't terminate this lease  
25 unilaterally?

1 MR. WESTON: No. It's good rent. It's a healthy  
2 return.

3 THE COURT: No, no, no. It's fine with me. I would  
4 like to make sure that it stays what it is.

5 MR. WESTON: Sure, because it maintains, obviously,  
6 continuity of the program and continuity of the client  
7 residents.

8 THE COURT: All right. He's not objecting. We'll  
9 take a look at the order, but I'll tell you, the order is not  
10 going to have a lot of ways for him to get out of this.

11 MR. WESTON: No. Indeed --

12 THE COURT: All right, I'll grant the motion.

13 MR. WESTON: Thank you, Your Honor.

14 Briefly, by way of status, I think we gave a fairly  
15 detailed status report at the hearing as to what was  
16 transpiring with the bid process between the State and  
17 providers on the one hand and Almark on the other. Your Honor  
18 may we recall that we had received an unsolicited all cash bid  
19 from the Almark Liberty 1 joint venture. We had put due  
20 diligence requests out to both parties, received responses from  
21 both the State and providers on the one hand and Liberty and  
22 Almark on the other hand.

23 I think in the December hearing we were just about to  
24 have both parties appear at the board meeting. In December,  
25 both parties did, made presentations of their respective offers



1 to the board. The board had a fairly comprehensive discussion  
2 at that meeting. Mr. Scharf was also in attendance to hear the  
3 presentations. The board put out a second set of due diligence  
4 requests to both parties, going to issues such as financial  
5 commitments, capital resources, plans with respect to --

6 THE COURT: Who's buying it? The State?

7 MR. WESTON: The State -- the individual providers  
8 that took the programs are buying the properties.

9 THE COURT: As a group or as individual buildings?

10 MR. WESTON: Individually. In other words, UCP will  
11 buy the properties that has the residents and the program, that  
12 it's run just like JBSCS is -- I'm sorry. I don't want to  
13 confuse matters. UCP will buy the buildings that house the  
14 residents of the programs it took. HRC will buy the buildings  
15 that house the residents' programs it took. JBSCS will be  
16 buying the OMH properties, which house the residents that are  
17 covered by his programs. The State is providing financial  
18 support.

19 THE COURT: To those entities?

20 MR. WESTON: To those entities. With respect to the  
21 OMH properties, the financial support is going to be through a  
22 grant program. With respect to the OPWDD programs -- and we'll  
23 spell this out in a motion -- eventually, it'll be through what  
24 they call the PPA program, Prior Property Approval, which is a  
25 support program for traditional bank financing.

1 THE COURT: But the concept is all of the buildings.  
2 Are both sides' deals predicated on buying all of the  
3 buildings?

4 MR. WESTON: Yes, substantially all of the buildings.  
5 On the Liberty 1 Almark, they've carved out seven, which are  
6 underwater, which in fact we asked them to carve out. But yes,  
7 effectively, they're dealing with all of the remaining  
8 buildings.

9 THE COURT: And the beneficiary of those funds are  
10 essentially the State bond packages?

11 MR. WESTON: The --

12 THE COURT: Mortgages.

13 MR. WESTON: The bond holders will be the  
14 beneficiaries to the extent that the debt is all being assumed,  
15 or if it's an all cash deal, the bonds will be -- I mean, the -  
16 -

17 THE COURT: Ah.

18 MR. WESTON: -- mortgage would be paid.

19 THE COURT: So the bids can... I get it. So, one  
20 bid may get you off the hook; the other is cash?

21 MR. WESTON: Yeah. One's cash, which is going to pay  
22 off the bonds; the other is going to be an assumption of all  
23 debt, as well as cash. Creditors -- actually, the net dollars  
24 to creditors under both bids right now, effectively the same.  
25 The big difference from the FECS board's standpoint and, if I

1 might, just after the board meeting, we put out a second due  
2 diligence request, as I was saying, asking information with  
3 respect to plans with regard to the clients themselves,  
4 guarantees that the clients would have continued residency  
5 rights. Obviously, under the State provider bids, they will.

6 Under Almark, there was an agreement to be the  
7 tenants in place for up to 30 months while they negotiated  
8 long-term leases.

9 THE COURT: Well, that's going to affect... Well, I  
10 don't know, I haven't seen it and you guys have to select it.  
11 But one of the things I've learned with these charitable  
12 functions, charitable bankruptcies, not-for-profit  
13 bankruptcies, is that part of the determination of the Court as  
14 to what is better, higher is easy. What's better is what  
15 better reflects what's the best way to reflect the intent of  
16 the entity that is now in front of you, as opposed to what's  
17 the highest money that a creditor can get.

18 MR. WESTON: That's absolutely the case. And indeed,  
19 the board, in its consideration, has considered its dual  
20 mission or dual duty going to creditors and true to the  
21 continuity of the mission.

22 After the board meeting in December and after  
23 receiving responses from both parties, there was a very  
24 comprehensive discussion by the board at a meeting on January  
25 25th, at which both offers were thoroughly vetted by the board.

1 As I said, from an economic standpoint, they're effectively the  
2 same. The difference is about \$80,000.

3 From a mission standpoint, however, the board felt  
4 rather strongly that the State provider proposal provides  
5 continuity of care and the best assurance for the continued  
6 residents of a very fragile population.

7 Their concern was -- and we'll spell it out more so  
8 in the motion -- is that at the end of 30 months, if the  
9 Liberty Almark Group doesn't have long-term leases, the notion  
10 of trying to relocate clients and trying to find new properties  
11 for them could have a devastating effect on the client  
12 population.

13 THE COURT: Well, we've been involved in this case  
14 now for a while.

15 MR. WESTON: Mm hmm.

16 THE COURT: And all the parties have tried, hopefully  
17 to this point successfully, to take into consideration the  
18 needs of these folks.

19 MR. WESTON: And --

20 THE COURT: You've moved a lot of things quickly that  
21 we would not ordinarily do, but for the fact that you had a lot  
22 of folks at risk.

23 MR. WESTON: Which --

24 THE COURT: That analysis, at least for me, is going  
25 to continue, so...

1 MR. WESTON: Which Your Honor has helped us out  
2 tremendously at the beginning of this case.

3 In any event, the board has designated the state  
4 providers as the potential stalking horse bid. They've  
5 authorized a chief wind-down officer, Ms. Pincus, to go forward  
6 and negotiate final APAs and settlement agreements with the  
7 state.

8 We will bring on a sale motion. It will establish a  
9 bid process. And we will ask ultimately for entry of an order  
10 setting forth bid procedures --

11 THE COURT: Now, this is essentially all the  
12 remaining assets?

13 MR. WESTON: This is --

14 THE COURT: Part assets.

15 MR. WESTON: Well, actually, all of the remaining  
16 assets. There is one single piece of property and then there  
17 are the interests in the four real estate entities, which we  
18 don't own, and which we just -- I'm sorry, which are not  
19 properties of FECS, but which FECS has an interest in. Those  
20 are the Tanya Towers, (indiscernible), Forsyth and Tonya 2,  
21 which will probably be a subject in a separate sale motion.

22 THE COURT: But if this is a big enough number and  
23 these are all properties in the city?

24 MR. WESTON: I'm sorry.

25 THE COURT: Aren't all these properties in the city?

1 MR. WESTON: All these properties are in the city  
2 (indiscernible).

3 THE COURT: So, you're going to want relief. So,  
4 you've got to let me know where we are in the plan process.

5 MR. WESTON: Absolutely. Absolutely.

6 THE COURT: Because this is going to be a big number.

7 MR. WESTON: Yeah. So, that's where we are. Briefly,  
8 on status, I anticipate that we'll have agreements filed and a  
9 sale motion ultimately filed, and we'll keep Your Honor  
10 apprised of the timing.

11 MR. WESTON: Just quickly, the Union settlement, as  
12 Your Honor knows, is approved. That's been funded, or it will  
13 be funded within the next couple of weeks. Weinberg's  
14 settlement was approved. That has been funded. In fact, I  
15 spoke to Mr. (indiscernible) on Friday. He's indicated that a  
16 substantial portion of the one six has been redesignated to a  
17 lot of metro area charities serving a very similar purpose to  
18 FECS. This has been redesignated by the Weinberg Foundation  
19 already.

20 THE COURT: I'm glad we got that one done.

21 MR. WESTON: Yes.

22 THE COURT: There were a couple of cases that  
23 followed that -- decisions that would've caused me some issues,  
24 but it's gone.

25 MR. WESTON: Lastly, we are in the throes of

1 discussions with the Department of Labor trying to fashion a  
2 settlement of WARN and severance claims of the non-union  
3 employees. You recall, we did the same with the union. That  
4 settlement is taking on, really effectively, the same contours,  
5 what's good for the goose is good for the gander, without  
6 looking to give them a better deal or a worse deal. I think we  
7 have an agreement in principle and we'll be hopefully  
8 negotiating -- excuse me.

9 THE COURT: So, you got that \$3 million, give or  
10 take, out to the employees?

11 MR. WESTON: It should be going out within the next  
12 week or two. It's with the payroll company at this point.

13 THE COURT: Good.

14 MR. WESTON: That's where we are.

15 MR. SCHARF: Quickly, Your Honor, just to follow up  
16 on some of the points Mr. Weston made. So, one thing we're  
17 going to be handing up right now, or hopefully submitting to  
18 Your Honor, is a stipulation between the Committee and the  
19 Debtor to give the Committee standing to bring causes of  
20 action, to assert causes of action, against the Debtor's former  
21 accountant/auditor as well as some of the principals of the  
22 Debtor. Your Honor had asked, at the beginning of this case,  
23 for an explanation of what had happened here.

24 We believe that we will have those laid out very  
25 clearly in a number of complaints. In addition, we'll also

1 allow the Committee to bring preference actions. We're  
2 approaching the two-year mark. We had hoped that preference  
3 issues could be addressed post-petition -- sorry, for  
4 confirmation of a plan. But, unfortunately, it looks like  
5 we're not going to be able to do that, and we may bring the  
6 actions to preserve the statute of limitations, but at the same  
7 time, asked to hold off on prosecuting those until a plan is  
8 confirmed.,

9 THE COURT: Well, I'll look at what you filed. Just  
10 remember the creation of an entity to bring claims on behalf of  
11 the Debtor, the language of that stip and the ultimate order,  
12 be very careful with.

13 MR. SCHARF: Yes, Your Honor.

14 THE COURT: There's a lot of litigation these days  
15 about what's the scope, and if it wasn't a transfer, that a  
16 litigating trustee does not necessarily have exactly the same  
17 powers as the Chapter 11 Trustee, which would be the debtor in  
18 possession. So, let's just try to do it right the first time.  
19 I know you guys do, but...

20 MR. SCHARF: Your Honor, we've fought off those  
21 claims in many other cases. So, I think we've -- I'm hoping  
22 that we have the language down pat at this point, but we, of  
23 course, continue to updated as --

24 THE COURT: All right.

25 MR. SCHARF: -- the case law developed. And in



1 addition, just one final comment on the negotiation of the  
2 grand sale of all of the properties. As Your Honor is aware,  
3 that was a very long negotiation, which involved a lot of back  
4 and forth behind the scenes, instead of in front of the Court.  
5 And we're happy that the Debtor has obtained the bid it's  
6 obtained and is moving forward with the sale process. Of  
7 course, we hope to see that increase --

8 THE COURT: No, that's -- it's a --

9 MR. SCHARF: -- as matters go forward.

10 THE COURT: I well can appreciate the complexity of a  
11 deal like that, so...

12 MR. SCHARF: Sure. And in addition, just with  
13 respect to Your Honor's comments about continuity of care and  
14 the Debtor's mission, we were lucky enough during this  
15 negotiation to have the Hebrew Homes case come out in the  
16 Second District, which has given us a very helpful roadmap,  
17 which frankly, we have not had in cases of a similar nature.  
18 So, there's been that level of guidance in this case as well.

19 THE COURT: All right. I agree with those cases.

20 MR. WESTON: When the stipulation gets filed, Your  
21 Honor, on the docket --

22 THE COURT: Just file it.

23 MR. SCHARF: Okay.

24 THE COURT: Give it to me.

25 MR. SCHARF: Very good.

1 THE COURT: All right.

2 MR. SCHARF: Thank you.

3 THE COURT: Thank you, all. Well, he's going to want  
4 a hearing -- he's going to want a date. Do you want me to put  
5 down a date for you for next status? When do you think you  
6 would have something you want to tee up? I don't want to make  
7 you come in twice.

8 MR. WESTON: How about if we confer and get back to  
9 you, Judge?

10 THE COURT: Just get back and pick a date.

11 MR. WESTON: Good. Thank you. We will, Your Honor.

12 THE COURT: We didn't resolve the carry to whatever  
13 date, concise explanation. Anybody on the phone want to be  
14 heard or even still on the phone? Anybody on the phone gets a  
15 million dollars. Anybody left? Never leave early.

16 WOMAN 1: Yes, Your Honor.

17 THE COURT: Thank you.

18 MR. WESTON: Thank you, Judge. We'll submit both  
19 orders.

20

21

22

23

24

25

I N D E X

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.

Sonya  
Ledanski Hyde

Digitally signed by Sonya Ledanski Hyde  
DN: cn=Sonya Ledanski Hyde,  
o=Veritext, ou,  
email=digital@veritext.com, c=US  
Date: 2017.02.15 16:19:45 -05'00'

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: February 15, 2017

[& - assume]

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[assumed - competitive]

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[event - house]

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**Information to identify the case:**

Debtor

**Federation Employment and Guidance Service, Inc.**

EIN **13-1624000**

Name

United States Bankruptcy Court Eastern District of New York  
290 Federal Plaza  
Central Islip, NY 11722

Date case filed for Chapter **11: 3/18/15**

Case number: **8-15-71074-reg**

**NOTICE OF FILING OF TRANSCRIPT AND OF DEADLINES RELATED TO  
RESTRICTION AND REDACTION**

**NOTICE IS HEREBY GIVEN THAT:**

A transcript of the proceeding held on 2/6/17 was filed on 2/15/17.

The following deadlines apply:

The parties have until February 22, 2017 to file with the court a Notice of Intent to Request Redaction of this transcript. The deadline for filing a Transcript Redaction Request is March 8, 2017.

If a Transcript Redaction Request is filed, the redacted transcript is due March 20, 2017.

If no such Notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is May 16, 2017, unless extended by court order.

To review the transcript for redaction purposes, you may purchase a copy from the transcriber Veritext Legal Solutions at 888-706-4576 or you may view the document at the public terminal at the Office of the Clerk.

Dated: February 16, 2017

For the Court, Robert A. Gavin, Jr., Clerk of Court

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Case: 8-15-71074-reg

User: dcorsini  
Form ID: 295

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